IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 431 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE CO.LTD - Appellant(s)
Versus
BABY ANJALI D/O MANOJKUMAR THRO' HER GUARDIAN RESP.NO.1 & 3 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
None for Respondents No.1 to 3

None for Respondent No.4

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/09/2007

ORAL JUDGMENT

1. Shri Rajni H. Mehta, learned counsel for the appellant; none for the respondents no. 1 to 3

though name of Shri R.N. Shah is shown in the daily cause list; none for the respondent no.4 though served.

2. The appellant-Insurance Company, being aggrieved by the award dated 18th May, 1990 passed by the learned Motor Accident Claims Tribunal [Aux], Panchmahals at Godhra in M.A.C. Petition No. 964/87, is before this Court with a submission that the Tribunal erred in holding the Insurance Company liable to the extent of full amount as awarded by the Tribunal, less appreciating that the liability of the Insurance Company could be restricted to the extent of Rs. 1,50,000/-, interest thereon and the consequential costs.

3. Shri Rajni H. Mehta, learned counsel for the appellant submitted that though tractor as defined under Section 2[30] and the trailer as defined under Section 2[32] of the Motor Vehicles Act,1939 are separate motor vehicles, but if a trailer is attached to the tractor, then too, the vehicles joined together would become goods vehicle and for the goods vehicle, liability of the Insurance Company would only be

to the extent of Rs. 1,50,000/-.

4. Section 2[30] of the Act provides definition of "tractor" which reads as under:

> *" "tractor" means a motor vehicle which is not itself constructed to carry any load [other than equipment used for the purpose of propulsion] but excludes a road roller."*

Section 2[32] defines "trailer", the definition is as under:

> *" "trailer" means any vehicle other than a side car drawn or intended to be drawn by a motor vehicle;"*

5. At this stage, one cannot ignore the definition of "motor vehicle" as given under Section 2[18] of the Act, the definition reads as under:

> *" "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chasis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or "a vehicle of a special type adapted for use only in a factory or in any other enclosed premises"."*

6. A motor vehicle as defined under the Act would

include within its sweep a trailer so also would include any mechanical propelled, vehicle adopted for use upon roads where power of propulsion is transmitted thereto from external or internal source. Definition as given under Section 2[18] therefore would include tractor and trailer within the sweep of a motor vehicle.

7. Placing reliance upon the judgment of the Apex Court in the matter of National Insurance Company Limited v. V.Chinnamma and others [2004 ACJ 1909], learned counsel for the appellant submitted that the trailer attached with the tractor would become goods vehicle, therefore, the Insurance Company would be liable. In the opinion of this Court, the said judgment in the matter of the National Insurance Company Ltd. v. V.Chinnamma [supra] would not help and assist the case and cause of the appellant. That was a case where passenger was travelling along with his goods in the trailer attached with the tractor. The Court found that as he was a passenger in the trailer, which would come within the definition of a “goods vehicle”, the

Insurance Company could not be held liable.

8. Present is not a case where passenger was travelling in the goods vehicle. In fact, tractor had given a dash to a Moped, which resulted into death of one of the occupants of the Moped.

9. In the present case, it has also come on the records that separate premiums were charged for tractor and trailer, however, joint policy was issued. The Insurance Company did not insure the vehicle as the goods vehicle by charging single premium. When the Insurance Company was charging separate premiums for two vehicles, then, it cannot be allowed to say that if a trailer is attached to the tractor, two vehicles would become one and can be termed as goods vehicle.

10. Shri Mehta also relied upon yet another judgment of the Apex Court in the matter of Natvar Parekh v. State of Karnataka and others [[2005] 7 SCC 364 and contended that under the provisions of the Motor Vehicles Act, 1988, tractor-trailer is a distinct category of

"goods carriage" requiring permit under Section 66, therefore, in the present case, this Court should hold that when trailer was attached to the tractor, it became goods vehicle and the liability of the Insurance Company would come down to Rs. 1,50,000/- only. The judgment in the matter of Natvar Parekh [supra] would again not help the case and cause of the appellant, firstly because, it refers to the provisions contained in 1988 Act and the discussions made by the Apex Court were in relation to obtaining a permit for plying goods carriage and for purposes of taxation.

11. In the present case, the Tribunal has clearly found that in view of the charge of double premium, the Insurance Company would be answerable to the total claim awarded in favour of the claimants.

12. The Tribunal was not unjustified in holding that if two premiums are charged for two vehicles and if two vehicles are responsible for causing the accident, then, each of the vehicle would be liable to attribute to the accident

and even if I hold that the liability of Insurance Company would be to the extent of Rs. 1,50,000/- in relation to the trailer, then, the liability of the tractor would be unlimited.

13. Taking into consideration the totality of the circumstances, I hold that the appeal does not call for any interference. The appeal deserves to and is accordingly dismissed. No costs.

[R.S. GARG, J.]

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